

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
NO. 03 CV 12307 RGS
FILED - 5 P 12:38
DISTRICT COURT
DISTRICT OF MASS.

JOSEPH CRISTOFORO,
Plaintiff

VS.

JULIO LUPO,
FRANK G. COUSINS, JR.,
INDIVIDUALLY AND IN
HIS CAPACITY AS
ESSEX COUNTY SHERIFF, and
CERTAIN UNKNOWN
INDIVIDUALS
Defendants

AMENDED
COMPLAINT

PLAINTIFF CLAIMS
TRIAL BY JURY

USDC

Filed
3/1/04
USDC

General Allegations

1. The plaintiff Joseph Cristoforo is an individual with a place of residence in the Commonwealth of Massachusetts, and was at the time of the events alleged in the instant Complaint an inmate at the Essex County House of Correction in Middleton, Essex County, Commonwealth of Massachusetts.
2. The defendant Julio Lupo was at the time of the events alleged in the instant Complaint employed as a corrections officer at the Essex County House of Correction in Middleton by the Essex County Sheriff's Department.
3. The defendant Frank G. Cousins, Jr. is an individual that was, at all times relevant to the events stated within the instant Complaint, the Sheriff of Essex County, Massachusetts.
4. The plaintiff further alleges that certain unknown individuals, whose identities are presently unknown to the plaintiff but who were officers of the Essex County Sheriff's Department, did

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deprive the plaintiff of his rights as guaranteed by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, and as further stated herein.

5. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and claims violations of the defendant's civil rights as guaranteed by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States.
6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

Factual Allegations

7. On or about December 23, 2002, Mr. Cristoforo was incarcerated at the Essex County House of Correction.
8. On or about December 23, 2002, the defendant Lupo did assault Mr. Cristoforo with a blow to the head causing severe injury.
9. At the time the defendant did assault Mr. Cristoforo he was an employee of the Essex County Sheriff's Department and was acting under color of law.
10. That, prior to the assault, the plaintiff had notified certain Essex County Sheriff's Department officials, whose identities have not been fully ascertained, that he apprehended an impending physical assault at the hands of the defendant Lupo.
11. That as a result of the assault by the defendant, Mr. Cristoforo sustained extensive and permanent damages, including but not limited to, hearing loss, eyelid drooping, uncontrolled blinking, ringing ear, vision loss, walking difficulty and nausea.
12. That as a result of the above-described assault Mr. Cristoforo sustained physical injuries, mental anguish, emotional distress, and permanent injuries.

13. That all of the above-described acts took place at the Essex County House of Correction while the defendants were acting under color of law, on behalf of Essex County and in accordance with policies set forth by the Sheriff's Department.
14. That by the above-described assault, the defendants did deprive Mr. Cristoforo of his rights as guaranteed by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States, and prohibited by 42 U.S.C. §§ 1983 and 1988.
15. That the actions of the defendant Lupo in assaulting Mr. Cristoforo, and of the defendant certain unknown individuals in failing to take the steps necessary to avert the assault, were extreme and outrageous.
16. That the plaintiff has exhausted his administrative remedy procedure.

COUNT I THE PLAINTIFF JOSEPH CRISTOFORO'S CAUSE OF ACTION AGAINST
THE DEFENDANT JULIO LUPO PURSUANT TO 42 U.S.C. §§ 1983 AND 1988

17. The plaintiff repeats the allegations contained in paragraphs one and two of the General Allegations, and paragraphs seven through sixteen of the Factual Allegations.
18. That the defendant Lupo, an employee of Essex County and acting within the scope of his duties and under color of law did intentionally, or with a reckless disregard, and/or deliberate indifference to the rights of the plaintiff, assault and batter the plaintiff, which was the direct and proximate cause of the plaintiff's injuries.

Wherefore, the plaintiff Joseph Cristoforo demands judgment against the defendant Julio Lupo in an amount as the evidence may prove at trial, plus punitive damages, interest, costs and attorneys fees.

COUNT II THE PLAINTIFF JOSEPH CRISTOFORO'S CAUSE OF ACTION AGAINST
THE DEFENDANT FRANK G. COUSINS, JR., INDIVIDUALLY AND IN HIS
CAPACITY AS ESSEX COUNTY SHERIFF, PURSUANT TO 42 U.S.C. §§ 1983
AND 1988

19. The plaintiff repeats the allegations contained in paragraphs one through four of the General Allegations, and paragraphs seven through sixteen of the Factual Allegations.
20. That the defendant Cousins, the Sheriff of Essex County and acting within the scope of his duties as Sheriff and under color of law, had personal knowledge that the plaintiff faced a substantial risk of serious harm at the hands of the defendant Lupo and failed to take reasonable measures to abate that risk.
21. That the defendant Cousins acted intentionally or with callous indifference in his failure to take reasonable measures to abate the risk that the plaintiff would be assaulted and battered by the defendant Lupo, as the threats of harm were broadcast widely and repeatedly in the Essex County House of Correction, and were well known to the defendant Cousins.
22. That the defendant Cousins' failure to take reasonable measures to abate the risk that the plaintiff would be assaulted and battered by the defendant Lupo was the direct and proximate cause of the plaintiff's injuries.

Wherefore, the plaintiff Joseph Cristoforo demands judgment against the defendant Frank Cousins, Jr. in an amount as the evidence may prove at trial, plus punitive damages, interest, costs and attorneys fees.

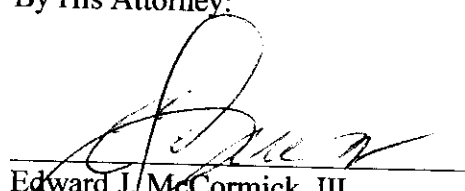
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COUNT III THE PLAINTIFF JOSEPH CRISTOFORO'S CAUSE OF ACTION AGAINST
THE DEFENDANT CERTAIN UNKNOWN INDIVIDUALS PURSUANT TO 42
U.S.C. §§ 1983 AND 1988

23. The plaintiff repeats the allegations contained in paragraphs one and three of the General Allegations, and paragraphs seven through sixteen of the Factual Allegations.
24. That the defendant certain unknown individuals, employees of Essex County and acting within the scope of their duties and under color of law, knew, or should have known, of the impending assault and battery upon the plaintiff at the hands of the defendant Julio Lupo, and by their failure to take any steps to prevent such assault and battery, did act with a reckless disregard, and/or deliberate indifference to the rights of the plaintiff, and were the direct and proximate cause of the plaintiff's injuries.

Wherefore, the plaintiff Joseph Cristoforo demands judgment against the defendant certain unknown individuals in an amount as the evidence may prove at trial, plus punitive damages, interest, costs and attorneys fees.

JOSEPH CRISTOFORO,
By His Attorney:



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